

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,)
)
Plaintiff,) CASE NO. CR18-115-RAJ
)
v.) Seattle, Washington
)
MELISSA GODSEY,) June 28, 2019
) 1:35 p.m.
Defendant.) SENTENCING
)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 PROCEEDINGS

2
3 THE CLERK: This is the case of United States versus
4 Melissa Godsey, Cause No. CR18-115, assigned to this court.

5 Counsel, please make your appearances for the record.

6 MR. HOBBS: Good afternoon, Your Honor. Stephen Hobbs
7 for the United States.

8 THE COURT: Good afternoon.

9 MR. GEIST: Good afternoon, Your Honor. Greg Geist
10 from the Federal Defender's Office, and I'm at counsel table
11 with Melissa Godsey.

12 THE COURT: Good afternoon.

13 THE PROBATION OFFICER: Good afternoon. Andrea Porter
14 with U.S. Probation.

15 THE COURT: Good afternoon.

16 As indicated, we are here for the sentencing of Ms. Godsey.
17 It is my practice to begin this proceeding by identifying all
18 the documents that I've reviewed and received, and those
19 documents include the following:

20 The presentence report prepared by Probation Officer Andrea
21 Porter, with attachments, and that includes victim-impact
22 statements; the United States Pretrial release report; the
23 government's sentencing memorandum and their recently filed
24 response to the defendant's motion. The court also reviewed the
25 defendant's sentencing memorandum, with exhibits and a letter

1 from the defendant; and the plea agreement.

2 Counsel for the government, are you aware of any additional
3 documents submitted that I did not state for the record?

4 MR. HOBBS: Did you receive the victim-impact letters
5 that were associated with the PSR?

6 THE COURT: Yes, counsel. I announced that already.

7 MR. HOBBS: Okay.

8 THE COURT: Have you reviewed the presentence report?

9 MR. HOBBS: I have, Your Honor.

10 THE COURT: And my review indicates that there are no
11 outstanding objections from the government that require
12 resolution; is that correct?

13 MR. HOBBS: Well, not an objection. We are agreeing,
14 in paragraph 22, to reduce the plus-six enhancement to a
15 plus-four enhancement.

16 THE COURT: I'll make that adjustment, counsel, in the
17 court's guideline calculations.

18 Counsel for the defendant, are you aware of any additional
19 documents that I did not state for the record?

20 MR. GEIST: No, Your Honor. Thank you.

21 THE COURT: And, counsel, you've reviewed the
22 presentence report with your client?

23 MR. GEIST: Yes, Your Honor.

24 THE COURT: And my review indicates that there are
25 several objections that require resolution from the court,

1 correct?

2 MR. GEIST: That is correct, Your Honor.

3 THE COURT: Do you wish to make further argument on
4 any of those objections?

5 MR. GEIST: I don't think I do, no.

6 THE COURT: The court has had a chance to review all
7 the responses provided by Probation. As opposed to going
8 through each one, the court will adopt the responses and find
9 that they were all proper and appropriate, and the objections by
10 the defense will be overruled, and that includes those
11 referenced in the memorandum and in the statement to the court.

12 I'll announce my conclusions now as to the appropriate
13 offense level and criminal history category. For these
14 calculations, I've used the 2018 guidelines manual.

15 Counts 1, 2, 3, and 6 will be grouped, and Counts 4 and 5
16 will be grouped and scored in accordance with Guideline Section
17 2D1.2(d). With respect to Counts 4 and 5, aggravated identity
18 theft has a mandatory term of 24 months and runs consecutive to
19 any other counts of conviction.

20 Group one is regarding the bank fraud in Count 6 for
21 possession of stolen mail. The guideline for violation of this
22 type of offense begins with a base offense level of seven. As
23 noted by counsel for the government, by their concession, the
24 specific offender characteristics under Guideline Section
25 2B1.1(b)(1)(C) allows a four-level increase, as the loss amount

1 was more than \$15,000 but less than \$40,000. Therefore, a
2 four-level increase is applied.

3 The court also notes that two levels are added if the
4 offense involved more than ten victims. The court so finds and
5 applies a two-level increase.

6 Under Guideline Section 2B1.1(b)11(A)(1), two levels are
7 added if the offense involved the possession or use of any
8 device-making equipment. In this case, the defendant's
9 equipment and devices and fraudulent credit cards were with her
10 and had pictures with names not belonging to her.

11 There are no victim-related adjustments or adjustments for
12 role in the offense or for obstruction of justice. This gives
13 us an adjusted offense level subtotal of 15.

14 Without Chapter 4 enhancements, the court next proceeds to
15 adjustment for acceptance of responsibility. I find that, based
16 upon defense counsel's submissions, the defendant adequately
17 accepted responsibility.

18 I further find that the timeliness of her plea has given
19 the government the opportunity to more efficiently utilize its
20 resources; therefore, a three-level adjustment for acceptance of
21 responsibility is applied.

22 This gives us a total offense level of 12. The defendant
23 has a criminal history category of three. Her imprisonment
24 range is 15 to 21 months; Counts 4 and 5, 24 months to run
25 consecutive. The supervised release range is three to five

1 years. Probation, she's not eligible, and the fine range is
2 \$7,500 to \$1,750,000.

3 Counsel for the government, how do you wish to respond to
4 the court's calculations?

5 MR. HOBBS: The government accepts those calculations,
6 Your Honor.

7 THE COURT: Counsel for the defense?

8 MR. GEIST: We maintain our previous objections, Your
9 Honor. Thank you.

10 THE COURT: So noted. But otherwise, you accept them,
11 counsel?

12 MR. GEIST: Yes, Your Honor.

13 THE COURT: All right.

14 The next thing we'll proceed to is the recommendations from
15 the parties. I'll hear first from counsel for the government,
16 then I'll hear from probation, then defense counsel, and the
17 defendant will be the last person to address the court.

18 Counsel for the government, your recommendation?

19 MR. HOBBS: Thank you, Your Honor.

20 Consistent with the plea agreement, the government is
21 asking that you impose a sentence of 24 months on Counts 1, 2,
22 3, and 6, consecutive to the mandatory 24 months on Count 2.

23 Before I address sort of the substantive facts, briefly I'm
24 going to just focus my attention on the defense request that the
25 court has the authority to impose a one-month sentence, followed

1 by 23 months of home detention. I was, frankly, surprised to
2 see that recommendation. I think it's inconsistent with the
3 plea agreement. It's clearly inconsistent with the mandatory 24
4 months of imprisonment. And for the reasons I've set forth in
5 my response to the defense sentencing memorandum, I think it's
6 also inconsistent with the sentencing guidelines.

7 Twenty-four months becomes the guideline sentence. That's
8 a Zone D enhancement, and home detention is not authorized.

9 Unless the court has any other questions, I'll rest on my
10 briefing on that issue.

11 THE COURT: All right. Thank you, counsel. I have no
12 additional questions.

13 Probation?

14 MR. HOBBS: I'm sorry. That was on the first part.
15 May I just address a few more...?

16 THE COURT: Certainly.

17 MR. HOBBS: I apologize.

18 The court understands the facts of this case. Ms. Godsey,
19 who the government acknowledges had a severe drug problem, went
20 on a lengthy criminal spree in which she was stealing people's
21 identities, using those identities to buy a car, to cash checks,
22 and to do other criminal activity. She was in possession of a
23 very large amount of stolen mail.

24 Our recommendation below the guideline range -- well below
25 the guideline range, at 24 months and one day -- recognizes her

1 difficult upbringing, recognizes her drug addiction, recognizes
2 she has children, but it holds her accountable for her criminal
3 actions.

4 The last point I would like to make is, I have submitted an
5 amended order of forfeiture. The court previously, at Docket
6 39, entered an order of forfeiture. We have since been in
7 contact with CarMax and realize that they were able to sell the
8 car and, thus, recoup some of our losses. The amended
9 forfeiture amount is \$24,695.58. I'd ask the court to enter
10 that order, so state on the record so it's been reflected in the
11 judgment, and I'm recommending our restitution request to the
12 same amount.

13 The plea agreement contains Attachment A that sets forth
14 the restitution.

15 THE COURT: Counsel, would you state the numbers once
16 again? \$24,695?

17 MR. HOBBS: And 58 cents.

18 THE COURT: All right. Thank you, counsel.

19 MR. HOBBS: Thank you.

20 THE COURT: Probation, any additional input?

21 THE PROBATION OFFICER: We're recommending the minimum
22 sentence in the case, 24 months and one day custody, largely
23 based upon our recognition that the defendant, Ms. Godsey, has
24 made -- we want to recognize the changes that she has made
25 during her term on bond, and we think that they've been

1 substantial, and we are supportive of the directional path that
2 she's maintained. In this case, we do have a mandatory minimum
3 sentence.

4 THE COURT: All right. Thank you.

5 THE PROBATION OFFICER: Thank you.

6 THE COURT: Mr. Geist?

7 MR. GEIST: Thank you, Your Honor.

8 Ms. Godsey's father, her 12-year-old child, and her
9 13-year-old child are each in the courtroom here today, and I
10 think I'd like to address them first.

11 Melissa has made what has to be among the greatest
12 turnarounds on pretrial release -- at least that I have ever
13 seen -- and I do not know what more could have been expected of
14 her.

15 So her father, her children, they have a lot to be proud
16 of. So does Melissa.

17 When Melissa is actively using drugs and she's undertreated
18 for her mental health issues, her bipolar disorder, she's,
19 clearly, someone who is not deterred from stealing in order to
20 obtain drugs.

21 If we look back at her history, even while she was
22 undertreated for her mental health issues, she wasn't using
23 drugs between 2009 and 2015.

24 She lost custody of her children around 2009, but she
25 worked hard to get them back into her life and for them to have

1 a mother, and that was during her period of sobriety between
2 2009 and 2015.

3 She entered a treatment program at Evergreen and she was
4 able to succeed there. She lived there at Evergreen. She
5 engaged in counseling and therapy. And there was even a point
6 in time where she entered community college, finished up a
7 program there, and her future looked bright.

8 Her youngest son was born in 2013, and Melissa experienced
9 postpartum depression. That eventually led to self-medicating,
10 and that self-medicating eventually led to full-blown drug use.

11 She didn't know it at the time, but she was medicating, I
12 believe, for a yet-to-be-diagnosed mental health issue, which is
13 bipolar disorder.

14 The outcome was easy to predict; that someone who is a drug
15 addict, who is feeling depressed, who is not getting treated for
16 bipolar disorder, a relapse was going to happen sooner or later.
17 That was easy to predict.

18 If Melissa could have done something back then, if she knew
19 what to do, if she was willing to accept the fact that she was
20 bipolar, I think she probably would have done something back
21 then about it. But between the postpartum depression and the
22 self-medicating, I think that's how we end up where we are now.

23 She started using drugs, she stopped spending time around
24 the community that she built up, the positive community and the
25 positive influences, the people who celebrated her sobriety.

1 Instead, she turned to people who she could get drugs from,
2 people who also were willing to steal, people who were willing
3 to lie, and, frankly, people who didn't care about anything else
4 other than getting high. That's where Melissa ended up.

5 She told me that her addiction caused her to prioritize her
6 drug use over everything else, and that's where we think that
7 there's a fundamental misunderstanding, her inability to
8 understand the nature of addiction, by the government, that this
9 isn't something that she chose. If she could choose a different
10 path, she would have, but this is something that she's dealing
11 with head-on.

12 The first thing that she would think about when she woke
13 up -- sometimes it was in the morning, sometimes it was in the
14 afternoon -- but the first thing she would think about was where
15 she's going to get drugs. It wasn't about "Am I going to take
16 my kids to school? Am I going to pack up their lunch? What am
17 I going to do with them after school?" Those weren't thoughts
18 on her mind. That was easy to predict. Any of us could have
19 predicted that.

20 So the parenting responsibilities fell on others; fell on
21 people like her father; her other family members, like cousins,
22 who took in her children. And we know what happened. She went
23 out -- she was stealing, and she -- I think it's almost fitting
24 that the crime that she committed was identity theft, because
25 I -- she -- I do not believe that she wanted to be herself. She

1 wanted to be someone else, and she assumed those identities, and
2 I think that was -- that was an escape for her. She just
3 wanted -- she was looking for happiness in the wrong places.

4 So I think the drug use and the identity thefts helped her
5 escape, pretend to be someone else, because in her own skin she
6 was depressed, and I don't think she valued her own life.

7 We believe that there is a better way to do justice than
8 what the government proposes, and that's what we've laid out, a
9 way that is consistent with what the advisory guidelines say can
10 be done, and that is one month in custody, and then the 23
11 months and a day on home detention. I think it's important to
12 note that the government has not cited any case law to support
13 its position about how a term of imprisonment may be served.

14 And what we're proposing is a 24-month-and-one-day term of
15 imprisonment. It is completely consistent with the plea
16 agreement, which was crafted by the government, and all terms
17 are to be construed against the government, because they are the
18 entity that wrote this contract.

19 So as far as the implication that there is some type of
20 breach of the plea agreement, we are asking -- we are asking for
21 a term of imprisonment. We're not asking for anything other
22 than that.

23 I think it's also important to ask the question: When are
24 we going to learn that sending nonviolent offenders who have
25 drug addiction, who are addicted to drugs and have mental health

1 issues, when are we going to learn that prison does not work?
2 It doesn't reduce recidivism. It continues the cycle of
3 addiction not only for Melissa, but, potentially, for others
4 around her who she is trying to support now.

5 I think importantly here, it separates families. If this
6 were in a vacuum and Melissa didn't have children, I think two
7 years of actual prison would be easier for her than being
8 separated from her children now.

9 So the harm for Melissa, it's the harm to her children and
10 what is going to happen with them, because that is uncertain.
11 And what we're going to be doing is separating her and her
12 children from a stable environment that they have now and
13 putting them into instability. And when are we going to learn
14 that separating families does not work, when we have someone who
15 is stable and who has learned what her issues are?

16 The policy of sending parents to prison increases that
17 likelihood that a future generation ends up in the same place.
18 And prison as a tool for justice is just simply not the answer
19 in this case. It isn't.

20 As I mentioned, I think the disconnect here is that the
21 government doesn't understand how addiction works. And the
22 government did have the opportunity to see Ms. Godsey's
23 progress. I think if we look at the government's response to
24 the defense memo, the government notes that it's familiar with
25 Melissa's history with substance abuse, the fact that she has

1 young children, and that she's done well on bond.

2 In its sentencing memo, the government says that its
3 request for prison time is driven by two factors. One is,
4 basically, Melissa has never served any time in custody before.
5 I think she served eight days in custody over ten years ago, and
6 then served the remaining 30 days on home detention, and then
7 around 2010, she served about 90 days on home detention. That's
8 while she was at Evergreen, where she served those 90 days. So
9 that's one of the factors that the government cites.

10 And then, apparently, the government states that -- the
11 fact that she doesn't take care of her young children was
12 another factor that seemed like the government was stating
13 there.

14 At the same time, the government says that it hopes that
15 Melissa is able to turn the positive gains into a lasting change
16 for the better, and the government's answer is to send her to
17 prison, actual prison, and separate her from her children for
18 two years.

19 We believe that the government's position is archaic, it's
20 cruel, and it implies that it doesn't understand how addiction
21 and treatment works.

22 We think that it's important to look at the current
23 political environment. We have an administration that openly
24 creates and supports policies, with the knowledge that those
25 policies destroy families by separating children from their

1 parents.

2 We look at the Holder memo under the Obama Administration.
3 That said that, "Equal justice depends on individualized
4 justice, and smart law enforcement demands it." It instructs
5 that charging decisions, plea agreements, and advocacy at
6 sentencing must follow from an individualized assessment of the
7 facts and circumstances of each particular case. The memo
8 required charging decisions to, quote, be informed by reason and
9 by the general purposes of criminal law enforcement; punishment,
10 public safety, deterrents, and rehabilitation.

11 On May 10, 2017, the U.S. Attorney's Offices across the
12 country received what's now known as the Sessions memo. It
13 rescinded the Holder memo, and, with it, we believe equal
14 justice that focuses on individualized justice.

15 The Sessions memo required federal prosecutors to pursue
16 the most severe penalties possible, including mandatory-minimum
17 sentences. I think at the time civil rights groups, Republican
18 lawmakers, even other conservatives condemned that policy, that
19 it was taking the nation backward.

20 Former Attorney General Holder said that it was done on
21 crime, and because it takes a cookie-cutter approach that has
22 only been proven to generate unfairly long sentences that are
23 often applied indiscriminately and do little to achieve
24 long-term public safety.

25 At the time, the director of the ACLU's Campaign For Smart

1 Justice warned that the Sessions policy would, quote, rip apart
2 families and communities.

3 At the time, Attorney General Sessions responded to that
4 criticism, and he disputed the idea that prosecutors would
5 unfairly punish nonviolent offenders, nonviolent offenders like
6 Ms. Godsey.

7 We believe that, through its prosecution of Ms. Godsey and
8 its objection to allowing her to serve a term of imprisonment on
9 home detention, the government is following through with
10 conservative policies that separate families and make the
11 communities less safe in the long term.

12 And we believe that in this situation, the government is
13 even calling for a sentence that Attorney General Sessions
14 promised against; that's unfair punishment of nonviolent
15 offenders.

16 You know, I don't want you to get my point wrong. Melissa
17 committed crimes. She committed a lot of crimes. She stole
18 from people. She stole money, and she pled guilty to these
19 offenses. We're not making excuses for it. You're going to
20 hear from Melissa. She's going to take full responsibility.
21 She, from the beginning of this case, told me that she wants to
22 take full responsibility, she wants to pay back her victims, and
23 do the best that she can for her children.

24 The government concedes that Ms. Godsey is a nonviolent
25 offender, concedes that she's done well on pretrial release and

1 knows that her children will be separated from her, with an
2 unknown future, but it still holds to its mandatory minimum and
3 objects to allowing her to serve the 23 months and a day on home
4 detention, which we believe is consistent with the guideline
5 definition of "term of imprisonment."

6 So the government's had the ability to see Ms. Godsey's
7 progress, as I've noted.

8 I think that the message here is that the government is
9 telling Melissa that the cost of incarcerating her for two
10 years, a cost that advances its need to deter specifically and
11 generally, is a cost that outweighs the benefit of keeping her
12 three young children together with a mother who's receiving the
13 most effective treatment for drug addiction and mental-health
14 issues.

15 We're asking for methods that are proven to work, rather
16 than methods that have failed in the past. Those failed
17 policies and the collateral consequences from them, which the
18 government continues to defend in Melissa's case, resulted, in
19 the past, from a separation of families and a cycle that we see
20 through the criminal justice system across America today.

21 I think it's also important to look at how well Melissa has
22 done on pretrial release. And it's important to look -- since
23 the government raised it in its memo about plea negotiations,
24 it's important to put those negotiations into context, because
25 the government raised that issue.

1 When this case first started, the government asked Melissa,
2 through me, to apply for DREAM. We all knew that she was not
3 eligible. That gave hope to Melissa that there would be some
4 alternative to actual prison and incarceration, but it also gave
5 her hope that she was going to get treatment and help. So even
6 though she was not eligible, we applied, and Melissa maintained
7 hope.

8 I told her, "You're not getting in. You have more than one
9 felony." We don't know why she didn't get in, but we can guess.
10 And even though she did not get in, I think it's important to
11 look at how this process has played out and how she's reacted
12 from it.

13 She didn't give up. She didn't quit. She maintained her
14 medication-assisted treatment. She accepted a diagnosis that
15 she was bipolar, and she got treatment for both. She wakes up
16 now, and all day every day using drugs is not even something
17 that's on her mind. She doesn't even think about it. But we do
18 know that when her Suboxone levels that she's described go down
19 to four milligrams and a little bit lower than that, she feels
20 suicidal, and she feels like she's going to use drugs.

21 So when we learned that she wasn't eligible and that a
22 supervisor from the U.S. Attorney's Office and a criminal
23 chief -- and that's what's noted, I believe, in the government's
24 memo -- I invited the criminal chief to join me to go out to
25 meet with Melissa in Yakima, where she was getting treatment at

1 the time. It's a great facility, they were very strict, and I
2 think that's where Melissa found her grounding.

3 I think up to this day, no one from the U.S. Attorney's
4 Office has met or talked to Melissa, but they make a
5 recommendation that what's necessary is that she serve time
6 behind bars, separated from her children.

7 After I met -- as noticed in the government's memo, after I
8 met with the chief, the criminal chief, they were unwilling to
9 drop the aggravated identity theft charge. And, actually, the
10 government has been unwilling to drop any of the charges against
11 Melissa. Her offer was "plead to everything," without dropping
12 one single count.

13 Eventually, the agreement was for a term of imprisonment of
14 24 months and a day, and we believe that leaves open the
15 possibility of how that term of imprisonment may be served.

16 THE COURT: Counsel, let me point you to a particular
17 concern the court has, and I'll direct your attention to the
18 government's response to the defense sentencing memorandum at
19 Docket No. 41, and, specifically, on page 4, and I'll read it
20 exactly what it says, to refresh your memory.

21 "Sentencing Guideline 2B1.6 makes clear that the mandatory
22 term of imprisonment that is set by statute becomes the
23 guideline range. A 24-month term of imprisonment falls within
24 Zone D of the sentencing table under every criminal history
25 category. Because this is outside Zone D, defense counsel

1 relying on Guideline Section 5C1.1(c)(2) when requesting home
2 detention is simply wrong. That section only applies to
3 sentences that fall within Zone D of the sentencing table."

4 So, counsel, how do you get around the guidelines that are
5 abundantly clear to this court in terms of what the requirements
6 are upon this court?

7 MR. GEIST: Your Honor, the guidelines are advisory.

8 THE COURT: I understand that.

9 MR. GEIST: And are we on strong footing here?
10 Absolutely not. We're asking for the court to do something
11 exceptional because the circumstances demand it. We're asking
12 for Your Honor to do something that is -- that we feel like
13 Melissa will walk out of here, and justice will be done.
14 Holding her accountable, letting her pay back the money that
15 she's stolen from victims.

16 And, frankly, Your Honor, we aren't on strong footing here,
17 but we are asking Your Honor to give and -- to provide the
18 sentence that we're requesting. If the government decides to
19 appeal that, then that's something that will happen. If they
20 don't, then that's the way that Ms. Godsey will be able to serve
21 her term of imprisonment.

22 So we do realize that we are asking Your Honor to do
23 something exceptional here.

24 THE COURT: Let me ask you another question, counsel.

25 One of the components of the Section 3553(a) factors is

1 avoiding sentencing disparity. Now, I can ask the government, I
2 can also ask Probation. But I've been on the bench for a
3 considerable time, counsel. I'm not aware of any other
4 defendant that's ever received a sentence, under the aggravated
5 identity sentencing mechanism, where it allowed for a court or a
6 court permitted the type of sentence that you're recommending.

7 So how do we get around the fact that -- again, if you have
8 any other information, I want to hear about it. But I'm not
9 aware of any other defendant that has gotten around the
10 mandatory term of aggravated theft.

11 MR. GEIST: I do not know about aggravated identity
12 theft. I do know that Judge Coughenour, in a case for
13 Mr. Pippen, Mr. Pippen had a 10-year mandatory sentence. Judge
14 Coughenour sentenced Mr. Pippen to eight years in custody. I do
15 not believe the government appealed that.

16 Your Honor also noted sentencing disparities. I think it's
17 important to look at two cases I'm aware of, personally, that do
18 create the sentencing disparities that we're trying to avoid.
19 One is Joseph Gustavo Smith. He had an extensive criminal
20 history. He was -- his federal offense was possession of two
21 loaded firearms while he was running away from police officers.
22 He was a father -- single father of three children, a drug
23 addict, and I believe that there was no mandatory minimum, but
24 the government was asking for a term of imprisonment, I think,
25 of three or four years -- I can't remember -- but an extensive

1 term of imprisonment, and Judge Zilly sentenced Mr. Smith to
2 time served.

3 Another case that --

4 THE COURT: Well, counsel, I want to compare apples
5 and apples, because you referred to the Pippen case. That did
6 not involve a mandatory minimum. I'm speaking about sentencing
7 disparity about comparable or similarly situated individuals,
8 where a court has not followed the aggravated identity theft 24
9 months in prison.

10 MR. GEIST: The *Pippen* case, Your Honor, did involve a
11 mandatory-minimum sentence. The *Smith* case did not. But in the
12 *Pippen* case, in front of Judge Coughenour, Judge Coughenour did
13 give a sentence below the mandatory minimum. And there was, I
14 believe, at least in Judge Coughenour's mind -- I don't want to
15 speak for him -- but it seemed like there was a reason to go
16 below the mandatory minimum that did not involve 3553(e), and,
17 obviously, in that case, there could not be safety valve,
18 because it wasn't a drug case.

19 So can I give you another case for aggravated identity
20 theft? I cannot.

21 We turn to the guidelines, and what the guidelines allow
22 for a term of imprisonment, and that's what we're asking Your
23 Honor to do, to provide that one month of actual prison time,
24 and then the 23 months and a day of prison on home detention.

25 THE COURT: Counsel, before you go any further, let me

1 hear from Probation.

2 Are you aware of any circumstance that the court has asked
3 about that's an aggravated identity theft conviction that
4 resulted in anything other than the enforcement of the mandatory
5 24 months of imprisonment?

6 THE PROBATION OFFICER: I'm not aware of a case in
7 this district or in any other district.

8 THE COURT: How long have you been serving in the
9 district?

10 THE PROBATION OFFICER: Sixteen years, Your Honor.

11 THE COURT: All right. Thank you.

12 Counsel for the government, same question I've asked to
13 Probation and the defense.

14 MR. HOBBS: No, Your Honor.

15 THE COURT: Please continue.

16 MR. GEIST: Thank you, Your Honor.

17 When the *Valencia-Mendoza* case came out in January, it
18 redefined what it meant to have a felony. At that point, we
19 believed that Melissa no longer had any prior felonies, and that
20 she would be eligible for DREAM. So this was after she'd
21 already pled guilty and we reapplied. I told Melissa, "Do not
22 get your hopes up. You're not getting in." I think in her
23 mind, in her head, she knew she wasn't getting in, but in her
24 heart, while living at Hope Place -- she was living there with
25 other people who were in the DREAM program, and she heard about

1 it, and she couldn't help but getting her hopes up that we would
2 be able to find a way to get her into DREAM. Unfortunately, she
3 did not get in, but she still has done exactly what she needs to
4 do.

5 She's been a good mother, and she's worked hard on her
6 sobriety and working with her doctors as far as
7 medication-assisted treatment.

8 And I think that's the theme that we have here; that she's
9 maintained that dedication, and it's been because of her
10 children. So the two times that I've had the opportunity to go
11 out and visit with her in Yakima -- basically, all day with
12 her -- she was with her five-year-old son. That was the only
13 one of her children living with her at the time. The first time
14 I visited with her, her son was shy, was hiding behind her,
15 didn't have any kind of -- to me, it seemed like there wasn't
16 that confidence and that happiness that a young boy should have.

17 But when I went for the second visit, just a few months
18 after that, her five-year-old son was confident, playful, and he
19 was living in a safe and positive environment. And he changed
20 because he was with his mother.

21 The fear here is what's going to happen to a five-year-old,
22 between the age of five and seven, with unknown circumstances,
23 where he's going to live, what's going to happen with him.
24 What's going to happen with a 12- and 13-year-old and two very
25 important years of their lives?

1 Her children have changed for the better because of her,
2 because she is in their lives, and that's what we're asking the
3 court to allow us to continue.

4 Your Honor, I've done everything that I can. I've gone up
5 to the criminal chief. I've filed two applications for DREAM.
6 I've done everything that I possibly could do to prevent
7 children, who are happy, from being separated from their mother.

8 We believe that Your Honor, even though, Your Honor, I hear
9 what you have said, what is the prior situation for something
10 like this has happened, Your Honor, we're asking -- you're the
11 only one who has the power to avoid an injustice here, and we're
12 hoping that you could be the first judge to say that a term of
13 imprisonment may be served in the manner that we are requesting,
14 in a way that holds Melissa accountable, in a way that's
15 consistent with the guidelines for the term of imprisonment.

16 And, Your Honor, I do know that Melissa would like to
17 address Your Honor, unless the court has additional questions.

18 THE COURT: Just one last question, counsel, because
19 the issue that you've raised goes beyond just aggravated
20 identity theft. It really gets to the heart of what
21 mandatory-minimum terms are supposed to mean.

22 Wouldn't you agree with the court that the determining
23 factor there is what Congress has implemented as law and what
24 Congress has intended in terms of what "mandatory minimum" is
25 supposed to mean, and wouldn't you, essentially, be asking the

1 court to circumvent the laws of Congress? I'm talking about
2 Congress that precedes the last two presidents.

3 MR. GEIST: Your Honor, I think I have two responses
4 to the court's question. The first is that the statute calls
5 for imprisonment. The guidelines define what a term of
6 imprisonment may be. So we think that those two things are
7 consistent.

8 We are asking for imprisonment for 24 months and a day.
9 It's the way that it's implemented that we're asking Your Honor
10 to do.

11 The other point I would make is that if we look at the
12 aggravated identity theft statute and if we go back and look at
13 what it was intended for, a large bulk of what aggravated
14 identity theft statutes were meant for was for terrorism, not
15 for drug addicts who are, basically, single mothers who commit
16 thefts because they're addicted to drugs and they have
17 mental-health issues.

18 So if we look at the intent of Congress, as far as
19 aggravated identity theft, that's what we're dealing with. I
20 think a large part of why they implemented this law was to
21 prevent terrorism.

22 So that would be my response, Your Honor.

23 Unless Your Honor has additional questions, Melissa would
24 like to address Your Honor.

25 THE COURT: I have no additional questions.

1 Ms. Godsey, your lawyer has spoken for you. You're not
2 required to speak, but if there's something you'd like to say,
3 please step to the microphone.

4 THE DEFENDANT: I'm going to cry before I get started.

5 Okay. I want to start by saying that I know that I'm the
6 reason why I'm in this position today. I know that it's my
7 choices that is separating me from my children.

8 I desire to pay back every victim that I had an impact on,
9 and I would like to do that as quickly as possible, to resolve
10 anything for them.

11 I've had the opportunity to get sober, and I want to thank
12 the courts for coming in when they did, because I reached [sic]
13 on to everything that they gave me, and I took every opportunity
14 to change my life.

15 I was just begging for help at that time, when I got
16 arrested, and the judge who let me out on bond asked me to do my
17 best and get treatment, and he sees the pattern in my history
18 that drug abuse needs treatment, and I'm just grateful that I
19 got the opportunity to get treatment this past year and that I
20 wasn't held in custody.

21 I've done more than just get treatment. I've gotten my
22 kids back, and I built something, like a real foundation, to
23 live a good life.

24 I believe what's different this time around is that I have
25 medication-assisted treatment, which takes using out of the

1 equation for me. When I take Suboxone, I do not think about
2 using drugs. It's not even a side thought. It's just not
3 possible for me. It has a blocker in it. It would make me sick
4 if I did.

5 And so I've been able to get a clear mind and work and
6 figure out what my mental illnesses are and try medications that
7 work to fix it.

8 And right now I feel lucky and grateful that I get to speak
9 from my heart and speak clearly. And I guess what I mostly want
10 to ask of you is to not separate me from my kids. If there's
11 any way to not have that happen where I could still take
12 accountability and responsibility, I would greatly appreciate
13 it.

14 I have a five-year-old in Colton, and when I went to
15 treatment in Yakima, he used to hate going to bed because he was
16 afraid that when he would wake up, I wouldn't be there, because
17 that's what would happen when I would leave him at my dad's. I
18 would put him to bed and leave when he was sleeping, and I
19 wouldn't be there for him when he woke up.

20 He's about to turn six and start kindergarten, and he is a
21 confident, happy, thriving boy who goes to bed on time. He
22 doesn't have bad dreams anymore, and he is just doing great.

23 And I have Mason, whose birthday was yesterday, and he just
24 turned 12, and he's a good-hearted boy. And when I started
25 using, I quit working with him, and so he fell behind in

1 reading. So he's, like, two years behind, struggling in school.
2 And this past year, he's caughten [sic] up, and he's going to
3 start middle school almost caught up completely, when he was two
4 years behind.

5 And then I have an almost-13-year-old daughter, and she's
6 just beautiful, and she's starting to grow up, and I would hate
7 to miss this part of her childhood. I really want her to have a
8 mom for this next year and a half, two years. I think that she
9 needs it, and without one, I don't know what's going to happen.

10 Yeah.

11 I have a 17-year-old, who lives with his dad, and he's
12 okay, and he'll be okay there because his dad has had him for
13 six years. And I just started building our relationship again,
14 and we write letters and we talk on the phone at least twice a
15 week, and that's progress, because I went two years without
16 really talking to him.

17 So I've done -- since I got in trouble, I've done
18 everything that I could with what I had, and I'm grateful for
19 the opportunity for this past year, to have made all the strides
20 that I have. And I've come so far that -- I'm just proud of
21 myself, and I'm proud to be their mom.

22 That's all. Thank you.

23 THE COURT: All right. Thank you.

24 If there's nothing further to come before this court,
25 Ms. Godsey, this court is required to calculate an appropriate

1 guideline range, then to look at any traditional departures or
2 variances that would be appropriate in view of the facts and
3 circumstances, and I've done that as well.

4 In fashioning a sentence, the court must look at and
5 consider all the Section 3553(a) factors of the sentencing
6 guidelines. It's my practice to go through those factors so
7 that you have a clear understanding of what factors the court
8 considered in assessing what the proper sentence should be in
9 this matter.

10 When I look at your history and characteristics -- it's
11 where we begin with the guidelines -- there are aggravating and
12 mitigating factors. The aggravating factors are that you had
13 several prior convictions for theft or related offenses for the
14 exact same type of conduct, and there's been no stepping back or
15 relief under those circumstances. If anything, it's progressed
16 with increased level of commitment to being involved in that
17 type of activity.

18 Now, the mitigating factor behind the criminal activity is
19 the fact that you have substance-abuse and mental-health issues,
20 as well as the degree of addiction that you currently suffer and
21 experience.

22 The court also looks at the fact that you were raised in a
23 challenging home environment. The court doesn't need to go into
24 the details or the circumstances about that, as it's clearly
25 reflected in the presentence report.

1 The court also looks at the fact that you have young
2 children, and the need for you to be present and available for
3 your young children.

4 The court also looks at the fact that your pretrial conduct
5 has been exceptional, in terms of all the work that you've done
6 and the dedication and the commitment to your treatment.

7 The court looks at the nature and circumstances of the
8 current offense. The court finds that all the factors here are
9 all aggravating factors. That includes that you defrauded the
10 bank by making fraudulent charges and using fraudulent
11 identification, as well as the type of equipment that was
12 involvement, and but for law enforcement's involvement, this
13 activity would have continued, and the damages and loss would
14 have been aggravated and extreme and continued.

15 The court also looks at the fact that this was a long-term
16 pattern of mail fraud, bank fraud, and this type of theft
17 activity. This hasn't been something of recent occurrence, and
18 it appears to the court that the primary reason you stopped was
19 because you were caught.

20 The court also looks at the need for the sentence to
21 reflect the seriousness of the offense.

22 Now, I realize that the vehicle was able to be sold and the
23 outstanding restitution isn't as large. But, nonetheless,
24 what's troubling for the court is that when you did have
25 resources and you did have money, although it was ill-gotten

1 gain, is what you were doing with the resources. You went out
2 and bought a car and the way you were spending the money on
3 other events.

4 The court also looks at the need to promote respect for the
5 law and also to provide just punishment.

6 The court looks at how long and the repetition of what you
7 were doing and the continued pattern and continued criminal
8 activity, and your behavior. Now, I recognize that some of that
9 may have been driven by mental-health issues and drug addiction,
10 but, nonetheless, that fact demonstrates to the court that you
11 still didn't demonstrate respect for the law, in your own words,
12 until you were caught.

13 The court also needs to provide adequate deterrents so you
14 recognize and clearly recognize you can't be involved in this
15 type of activity. If there's treatment or whatever services
16 that need to be obtained, you have to engage in that fully in
17 order to take advantage of you staying away from future
18 activity.

19 The court also has to protect the public from further
20 crimes. You've seen the victim-impact letters in terms of the
21 devastation that that had on people, the long-term impact it had
22 on their credit, and the fear it continued to place on what
23 other catastrophic circumstances would be with the loss of their
24 identity.

25 The court also recognizes you need to be provided some form

1 of treatment in your sentencing alternatives.

2 And, lastly, to avoid sentence disparity. And you can see
3 the questions I had for counsel were designed to try and find
4 out if your case is truly unique, or if there's anything
5 different about the circumstances that you present to this
6 court.

7 So with all these facts, the court will first place you on
8 a five-year term of supervised release, with the standard and
9 special conditions exactly as stated in the presentence report.

10 Each of those conditions recommended by Probation will be
11 applicable, and you'll be expected to comply with them exactly
12 as they're provided.

13 Statutory fines for this offenses range from \$7,500 to
14 \$1,750,000. The court waives these fines. I find you don't
15 have the ability to pay a fine. The court will, however, impose
16 a special assessment fine for all counts. That amounts to \$600,
17 and that amount is due immediately.

18 Counsel for the government has articulated an amount of
19 restitution in the amount of \$24,695.58. I'll confirm with
20 counsel for the defendant that that's an accurate amount, and is
21 your client willing to accept that that's the proper amount of
22 restitution?

23 MR. GEIST: Yes to both questions, Your Honor.

24 THE COURT: Having imposed all the other conditions of
25 sentence, the only remaining issue is the imposition of any

1 custodial time.

2 Now, your lawyer has made a couple of requests, and your
3 lawyer has already indicated that he recognizes he's not on
4 solid footing. The reason I asked the question about mandatory
5 minimums is because your lawyer is asking this court,
6 essentially, to defy, in a significant way, what Congress has
7 imposed. Now, whether the statutory history talks about
8 terrorist activities, nonetheless, the primary purpose of that
9 statute was to avoid people continuing to steal the identity of
10 other individuals, because of the rapid and growing concern of
11 the impact that that has on this country.

12 The mandatory minimums of that statute were designed for
13 one specific reason. If other activity of that individual
14 didn't stop them by way of some form of limited punishment, then
15 to impose a minimum amount of time that individual would have to
16 serve in prison.

17 In some ways the court sees your remedy is not so much with
18 this court as it is with Congress in terms of defying or
19 clarifying for this court how to interpret a mandatory minimum,
20 other than imposing exactly what a mandatory minimum calls for.

21 Now a few words not just to you but to your family.

22 The fact that your mother is being sentenced today does not
23 mean she is a bad person. Your mother is a good person. She's
24 demonstrated that to you by the fact of the sacrifice that's
25 she's currently making right now to make changes in her life and

1 to make changes in your life for the long haul.

2 This is an opportunity for your mother to grow in different
3 ways so that when your mother does come back to you, her history
4 is her past. Her history doesn't dictate her future. And if
5 she continues to grow and she continues to take advantage of the
6 drug-treatment programs that are available for her, when she
7 comes back to you, she'll be a far better parent, and the
8 opportunity to restore your relationship will be there.

9 What I strongly encourage all of you to do is not to give
10 up on your mother. She's had some roadblocks and stumbling
11 blocks in her life. That does not mean that she does not love
12 you deeply and care about you deeply. So you have to make sure
13 you continue to provide that love to your mother in ways beyond
14 your imagination right now, whether that's writing letters,
15 whether that's going to visit her as much as you can. The
16 bottom line is, do not give up on your mother. She's still a
17 good woman.

18 The court believes that the appropriate sentence in this
19 case is to follow the recommendation of the government and
20 probation. That's 24 months on the aggravated identity theft,
21 one day for the following, which is to run consecutive.

22 The court will follow the recommendation regarding -- was
23 there a designation, counsel?

24 MR. GEIST: Your Honor, we don't know where Ms. Godsey
25 would like to request designation. We're hoping that Your Honor

1 recommends that she continue with medication-assisted treatment
2 while she's in BOP custody. I provided Your Honor with another
3 case out of Massachusetts. We're hoping over the next -- until
4 September 30th, to allow a turn-in date for September 30th so
5 that we can work with the Bureau of Prisons to figure out,
6 first, whether they will allow her to continue with
7 medication-assisted treatment.

8 We have been having conversations with the ACLU about the
9 possibility of their representation, if the Bureau of Prisons
10 does not allow Ms. Godsey to continue with MAT; potentially to
11 have them become involved in future, potential litigation.

12 So right now, I don't think we're in a position to make
13 that request, other than to ask Your Honor to make a
14 recommendation to the BOP to continue Ms. Godsey's
15 medication-assisted treatment, and then we're hoping that Your
16 Honor can order the BOP to provide Your Honor with updates on
17 how they're going to effectuate that recommendation.

18 THE COURT: And, counsel, are you aware -- and perhaps
19 probation can provide some input -- are you aware of any BOP
20 facilities that do provide for MAT therapy?

21 My understanding and I'm confident that the Federal
22 Detention Center does not authorize -- does not provide Suboxone
23 for in-custody individuals. I believe that there may be other
24 facilities around the country that provide that, but I don't
25 know where the weight of your preference would be; to be a

1 facility that provides MAT, as opposed to being closer to
2 family.

3 Have you had that conversation with your client?

4 MR. GEIST: I have, Your Honor. Ms. Godsey, while
5 she's in custody, there -- she has two priorities. One is to
6 continue with medication-assisted treatment, and the second
7 priority is to obtain the best drug treatment that she possibly
8 can. Those are her priorities, Your Honor.

9 THE COURT: All right. Let me ask Probation. Are you
10 aware of any facilities that currently provide or authorize
11 medication-assisted treatment?

12 THE PROBATION OFFICER: At this time, I'm not aware of
13 any facilities that do so. The only thing I am aware of is,
14 Officer Van Flandern said that there is a judge on the East
15 Coast who has recently recommended that the Bureau of Prisons
16 offer MAT, but at this point that has not happened. So I think
17 we're in the beginning stages. And like I said, at this point a
18 facility has not yet offered Suboxone.

19 THE COURT: Okay. I'm going to authorize a report
20 date of September 30th. This should give you ample opportunity
21 for your client to continue in the current drug treatment, if
22 you're in a position to try and get more of a clear and positive
23 direction from BOP regarding the authorization for BOP.

24 So for the government's direction for the J&S, it should
25 include "the court recommends MAT," and, counsel, I'm not going

1 to include a recommendation for where she serve her sentence. I
2 can put "MAT and a facility as near as possible to family."
3 Would that be acceptable, counsel?

4 MR. GEIST: I think that's a good idea, Your Honor.
5 Thank you.

6 THE COURT: Now, "as near to family," I'm not going
7 define "family." "As near as she can be to her children," would
8 that be appropriate?

9 MR. GEIST: I think probably "to Seattle."

10 THE COURT: All right. We'll put "Seattle," counsel.
11 Make that modification.

12 MR. GEIST: Your Honor, I did provide the court one of
13 the exhibits. It is a joint status report regarding Stephanie
14 DiPierro. She received a one-year and one-day sentence, and she
15 was designated to FMC in Carswell, Texas, and it was in a joint
16 status report, and that was something that the Bureau of Prisons
17 worked out, that her -- Miss DiPierro's report date was extended
18 until the BOP could determine which facility could facilitate
19 methadone treatment, continuing MAT, and they came up with a
20 joint agreement.

21 We're hoping that that's what happens in Ms. Godsey's case;
22 that we can work with the BOP to figure that out.

23 We appreciate the extension, Your Honor.

24 THE COURT: Are you asking for a specific inclusion in
25 the judgment, counsel?

1 MR. GEIST: We're not asking for specific inclusion,
2 Your Honor. I was just trying to answer Your Honor's question
3 about whether we're aware of any facilities where MAT treatment
4 is available.

5 THE COURT: Well, I've set the report date of
6 September 30th. If you learn additional information that needs
7 to be considered or that might affect her opportunity for
8 continued treatment, you can ask the court for a hearing to be
9 set regarding report date, and if that needs to be extended, the
10 court may consider that at that point in time.

11 MR. GEIST: Ms. Godsey appreciates that, Your Honor.

12 THE COURT: All right.

13 Counsel for the government, are you in a position to
14 challenge the court's determination?

15 MR. HOBBS: No, Your Honor.

16 THE COURT: Counsel for the defendant, are you in a
17 position to challenge the court's determination?

18 MR. GEIST: Other than the objections we've already
19 maintained, no, Your Honor.

20 THE COURT: All right. Then the court makes the
21 finding that the overall sentence is reasonable and efficient
22 but no more than necessary to carry out the objectives of
23 sentencing.

24 Ms. Godsey, I want to give you your rights on appeal.
25 Please pay close attention as I explain these rights to you,

1 before counsel gives you the judgment.

2 It's my understanding that in paragraph 12 of the plea
3 agreement, you waived your rights on appeal. Any rights on
4 appeal are exactly as stated in that document.

5 In addition to those rights, I wish to advise you that you
6 also have the right to challenge your lawyer's effectiveness.
7 If you wish to appeal your sentence, it's very important that
8 you tell your lawyer that's exactly what you wish to do. He can
9 explain to you any issues that are appealable and any issues
10 that might survive.

11 Now, if you wish to appeal the sentence and you cannot
12 afford the filing fee for the Court of Appeals, you can ask me
13 to waive it, and I will direct the court clerk to prepare and
14 file a notice of appeal at no cost to you, at your request.

15 With few exceptions, any notice of appeal must be filed
16 within 14 days of the judgment.

17 Lastly, the waiver does not preclude you from bringing an
18 appropriate motion pursuant to Title 28, United States Code
19 Section 2241 to address the conditions of your confinement or
20 the decisions of the Bureau of Prisons regarding the execution
21 of your sentence.

22 Do you understand each of these rights?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Counsel, you may present the
25 judgment to defense, then Probation before the court.

1 MR. HOBBS: Your Honor, just a few minor housekeeping
2 things. I've indicated that the report date is before 2:00 p.m.
3 on September 30th, and I've checked that box. In paragraph 13
4 of the special conditions, I've included the total restitution
5 amount, \$24,695.58. There's Attachment A that reflects that.
6 And, finally, I'd ask if the court is signing the amended order
7 of forfeiture and wants that fact reflected in the judgment.

8 THE COURT: It may, counsel. Are you presenting an
9 additional order of forfeiture, counsel, or the one that was
10 pre-submitted?

11 MR. HOBBS: I submitted one to the in-court moments
12 ago.

13 THE COURT: Why don't you check and make sure this is
14 the same one. That's the one I had before. You may have to
15 make a modification.

16 MR. HOBBS: I have a copy. Here's a copy of the
17 amended order of forfeiture.

18 THE COURT: I have it, counsel.

19 Any objection to the amended order of forfeiture?

20 MR. GEIST: No, Your Honor.

21 It conforms with Your Honor's oral rulings.

22 MR. HOBBS: May I approach?

23 THE COURT: Show it to the probation officer, counsel.

24 MR. HOBBS: Your Honor, I've also added the amount of
25 restitution on the top of page 7 of the judgment.

1 THE COURT: Thank you.

2 I take it there are no counts to be dismissed?

3 MR. HOBBS: That's correct, Your Honor.

4 THE COURT: And, counsel, there are strikeouts that
5 appear on page 2. I'll place my initials next to the changes.
6 And, counsel, I believe on page 2 it also reflects, under, "The
7 defendant is hereby committed to the custody of the United
8 States Bureau of Prisons," it indicates "one day, Counts 1, 2,
9 3, and 6." The box was not checked for "consecutive to." I'll
10 check that box at this time. Any objection?

11 MR. HOBBS: Thank you, Your Honor.

12 MR. GEIST: No, Your Honor.

13 THE COURT: And for the record, the court will note
14 that the interest is going to be waived.

15 I have reviewed the judgment. It does reflect the court's
16 oral ruling, and I have signed it.

17 If there's nothing further, we're in recess.

18 (The proceedings concluded at 2:38 p.m.)

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C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 30th day of July 2020.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter